

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Audrey Goddard et al.	Examiner:	Lorraine Spector
Serial No.:	09/202,054	Group Art Unit:	1647
Filed:	December 7, 1998	Docket:	G&C 669.23-US-WO
Title:	HUMAN TOLL HOMOLOGUES		

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CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being submitted via EFS-Web to U.S. Patent and Trademark Office on September 30, 2008.

By: /William J. Wood/  
Name: William J. Wood

PETITION UNDER 37 CFR 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT

MAIL STOP PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants' attorney submits this Petition in response to a "Notice of Abandonment" dated July 31, 2008, which indicated that the application was abandoned in view of the Decision by the Board of Patent Appeals and Interferences rendered on May 2, 2008 and because the period for seeking court review of the Decision has expired and there are no allowed claims.

This Notice of Abandonment is erroneous. There are allowed claims in the application, namely, claims 55-57.

Briefly, claims 28-30, 48-50 and 54 in this application were directed to antibodies that bind the PRO285 polypeptide. Claims 55-57 in this application are directed to antibodies that bind the PRO285 polypeptide and further "wherein the antibody is an agonist or an antagonist of NF- $\kappa$ B activation". In the Final Office Action dated November 25, 2005, claims 28 and 48 were rejected under 35 U.S.C. §102(b), claims 29, 49, 50 and 54 were rejected under 35 U.S.C. §103(a), and claims 28-30, 48-50 and 54-57 were rejected under 35 U.S.C. §101 and 35 U.S.C. §112, first paragraph. During prosecution, claims 55-57 were never rejected under 35 U.S.C. §102(b) or 35 U.S.C. §103(a) and the only rejections to these claims were those made under 35 U.S.C. §101 and 35 U.S.C. §112, first paragraph. Consequently, the "STATUS OF CLAIMS" section in the Appeal Brief filed February 7, 2007, identified claims 28 and 48 as being rejected under 35 U.S.C. §102(b), claims 29, 49, 50 and 54 as being rejected under 35 U.S.C. §103(a), and claims 28-30, 48-50 and 54-57 as being

rejected under 35 U.S.C. §101 and 35 U.S.C. §112, first paragraph. As noted on page 2 of the Examiner's Answer dated June 27, 2007, the statement of the STATUS OF CLAIMS contained in the brief is correct.

In the Decision by the Board of Patent Appeals and Interferences rendered on May 2, 2008, the rejections to claims 28 and 48 under 35 U.S.C. §102(b) and those to claims 29, 49, 50 and 54 under 35 U.S.C. §103(a) were upheld. However, the Examiner's rejections to claims 55-57 under 35 U.S.C. §101 and 35 U.S.C. §112, first paragraph were reversed in this Decision. Therefore, there are allowed claims in the application, namely, claims 55-57.

In accordance with M.P.E.P. §1214.06 at page 1200-59, Applicants' attorney was not required to file a reply to the Decision. Instead, the Examiner should have canceled claims 28-30, 48-50 and 54 and issued the application with claims 55-57.

Thus, Applicants' attorney hereby petitions for withdrawal of the holding of abandonment of this application.

No fee is deemed necessary in connection with the filing of this Petition. However, should the Office determine that a fee is required, the Office is authorized to charge any such fee to Deposit Account No. 50-0494 of Gates & Cooper LLP.

Respectfully submitted,

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Date: September 30, 2008

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